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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/689,295

10/20/2003

Richard M. Barrett JR.

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12/01/2006

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EXAMINER

LEE, CHRISTOPHER E

ART UNIT

PAPER NUMBER

2111

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/689,295	Applicant(s) BARRETT ET AL.	
	Examiner Christopher E. Lee	Art Unit 2111	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
 NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 1-6, 9-19 and 22-26.
 Claim(s) objected to: _____.
 Claim(s) rejected: 27-32 and 35-45.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


 Christopher E. Lee
 Primary Patent Examiner
 Art Unit: 2111

Continuation of 3. NOTE: The proposed amendment raises new issues in the claims 27 and 40-45, which have not been considered regarding to the claimed inventions in the claims 27, 40-41, the claims 42-43, and the claims 44-45, and which extends the scope of the claimed inventions, respectively. Therefore, it requires further consideration and/or search, and will not be entered. Furthermore, in response to the Applicants' arguments with the new issue regarding to the prior art rejection, the request for reconsideration has not been considered because the arguments with the new issue are drawn to the limitation which has not been entered for consideration.

Continuation of 11. does NOT place the application in condition for allowance because: In response to the Applicants' argument with respect to "At the outset, Applicants respectfully request the Examiner to remove the finality of this Office Action. The amendments previously made by Applicants in the response filed on August 25, 2006 together with the new claims 40-45 included therein were provided directly in response to the Examiner's indication that certain claims, such as 8-10 and 21-23, were objected to but would be allowable if rewritten in independent form. (Office Action mailed 5/25/06, 13). Now that Applicants have complied with the Examiner's suggestions, the Examiner has decided to conduct a new search and to reject new claims 40-45 (which are directed to the elements found in claims 9-10). Applicants submit that the amendments made in the August 25, 2006 response and the new claims 40-45 added therein did not necessitate any of the new grounds of rejection presented in this Office Action. Indeed, Applicants would have appreciated the Examiner performing this search to uncover the van der Tuijn reference prior to Applicants spending the costs associated with filing new claims 40-45. Now that the Applicants have undertaken this expense based on the Examiner's suggestion, Applicants respectfully request reconsideration and removal of the finality of this Office Action." in the Response page 13, line 20 through page 14 line 4, the Examiner respectfully disagrees.

In fact, the Applicants filed the After Non-Final Response on 25th of August 2006 with the newly added claims 40-45. However, in contrary to the Applicants' assertion, the claimed inventions in the claims 40-41, the claims 42-43, and the claims 44-45, have different scopes from the claimed invention in the claims 9-10, respectively. In other words, even though the Applicants assert that the newly added claims 40-45 include some of the elements of the claims 9-10, the scopes of the claimed inventions in the newly added claims 40-45 are different from the claimed invention in the claims 9-10, which means that the newly added inventions should be under the necessity of performing a new search based on prior art. Moreover, it is clear that the Applicants newly added the claims 40-45 in the After Non-Final Response filed on 25th of August 2006. Therefore, the Applicants' amendment necessitated the new ground of rejection presented in the Final Office Action mailed on 3rd of October 2006, and the Applicants' argument on this point is not persuasive.